INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Memorandum	3

CITATION

Case:	
Old Mission Portland Cement Co. v. *Helvering*, No. 107, October Term, 1934	3

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 413

GULF, MOBILE & NORTHERN RAILROAD CO.,
petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 66–95) is reported in 22 B. T. A. 233. The opinion of the United States Court of Appeals for the District of Columbia (R. 128–134 is reported in 71 F. (2d) 953.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered May 14, 1934 (R. 135). Its modified judgment was en-

tered June 25, 1934 (R. 135–136). Petition for writ of certiorari was filed September 20, 1934. Certiorari was granted November 5, 1934, limited to the sole question of the right of the taxpayer to deductions on account of amortization of bond discount. Jurisdiction is conferred on this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the amortization of the discount on bonds issued by a corporation, one of an affiliated group, and owned by a member of the same group, should be deducted in computing the consolidated net income of the affiliated companies for the years 1924–1926, inclusive.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved appear in the appendix to respondent's brief in *Old Mission Portland Cement Co.* v. *Helvering,* No. 107, with which the instant case is set for hearing.

STATEMENT

The facts found by the Board of Tax Appeals pertinent to the above issue may be summarized as follows: During the years 1924 to 1926, inclusive, the Gulf, Mobile & Northern and the Meridian & Memphis were affiliated, and for each of these years these corporations filed consolidated income-tax returns (R. 56, 88).

At various times between the years 1913 and 1916 the Meridian & Memphis sold its thirty-year 5% gold bonds, of a total face value of $675,000, to the Equitable Loan & Mortgage Company of Mobile, at a discount of approximately $131,000. At the time the Gulf, Mobile & Northern acquired the capital stock of the Meridian & Memphis the bonds of the latter were pledged as collateral for certain collateral-trust notes of the Equitable Loan & Mortgage Company. These notes fell due during the period of Federal control and were taken up by the War Finance Corporation. At the end of Federal control the Gulf, Mobile & Northern settled with the War Finance Corporation and took over the bonds pledged as collateral, at a cost of $636,000. Each year the Meridian & Memphis has charged off on its books one-thirtieth of the discount on the bonds, and in its returns for each of the years 1924, 1925, and 1926 claimed deductions for amortization of bond discount, each in the amount of $4,585.32 (R. 61).

The Commissioner disallowed these deductions. The Board of Tax Appeals upheld the Commissioner's determination, and the court below sustained the Board.

MEMORANDUM

The question presented is identical with "Question 1" in the case of *Old Mission Portland Cement Co.* v. *Helvering,* No. 107, with which the instant

case has been set for hearing. In both cases the attorney for the taxpayer is the same.

Outside of the fact that the bonds in the instant case were issued subsequent to March 1, 1913, there are no material differences in the facts of the two cases. Therefore, respondent refers to and relies upon his brief filed in No. 107, concluding that the decisions below should be affirmed.

Respectfully submitted.

FRANK J. WIDEMAN,
Assistant Attorney General.
ROBERT N. ANDERSON,
SEWALL KEY,
A. F. PRESCOTT,
Special Assistants to the Attorney General.

NOVEMBER 1934.

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